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### Memorandum, Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm., \_\_ U.S. \_\_ (2017): Legislative History of SB08-200

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## MEMORANDUM

**To:** Professor Craig Konnoth  
Professor Melissa Hart

**From:** Matt Simonsen, J.D. Candidate 2019  
University of Colorado Law School

**Date:** September 23, 2017

**Subject:** *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm.*, \_\_ U.S. \_\_ (2017)  
Legislative History of SB08-200

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### **PURPOSE OF SB08-200**

The legislative history primarily identifies two issues that SB08-200 was designed to resolve: (1) the need for dignity and access to justice for LGBT people and (2) inconsistency of Colorado anti-discrimination legislation. The page references below are divided by these purposes.

Additionally, I have included short summaries, with page references, of any narratives of LGBT discrimination that I found. Surprisingly, there was minimal discussion of the history of LGBT persecution. Instead, debate was dominated by opponents of the bill, who focused on its prospective impacts on the freedom of religious institutions and individuals to discriminate against LGBT people.

I'd be happy to provide more detail or respond to follow up questions if you would like.

#### **LGBT Dignity and Access to Justice**

##### 03/19/2008 Senate Committee on Business, Labor and Technology

*Master File pp. 23-67*

Monica Rosenbluth, Anti-Defamation League: pp. 19-21 (41-43)

Mindy Barton, Equal Rights Colorado: pp. 26-27, 30 (48-49, 52)

Bill Kirton, Interfaith Alliance of Colorado: p. 34 (56)

##### 04/18/2008 Senate Second Reading

*Master File pp. 68-110*

Senator Romer: pp. 7, 11-12 (77-78)

Senators Groff and Tapia: pp. 18-22 (85-89)

Senator Veiga (Sponsor): p. 27 (94)

Senator Morris: p. 33 (100)

##### 04/29/2008 House Committee on Judiciary

*Master File pp. 111-183*

Representative Judd (Sponsor): pp. 2, 4 (112, 114)

Mindy Barton, Equal Rights Colorado: pp. 32-34 (142-44)

Reverend Phil Campbell, Colorado Clergy for Equality in Marriage: pp. 48-50 (158-160)

Monica Rosenbluth, Anti-Defamation League: pp. 64-66 (174-176)

05/01/2008 House Second Reading

*Master File pp. 184-236 (part 1), pp. 237-250 (part 2), pp. 251-275 (part 3)*

Representative Levy: part 1, pp. 39-40 (222-223)

Representative Green: part 2, p. 8 (244)

Representative Fernandino: part 3, pp. 21-23 (271-273)

**Uniformity and Consistency of Anti-Discrimination Statutes**

03/19/2008 Senate Committee on Business, Labor and Technology

*Master File pp. 23-67*

Senator Veiga (Sponsor): p. 2 (24)

Brian Moore, Colorado Bar Association: pp. 22-23 (44-45)

04/18/2008 Senate Second Reading

*Master File pp. 68-110*

Senator Veiga (Sponsor): pp. 5-6 (72-73)

04/29/2008 House Committee on Judiciary

*Master File pp. 111-183*

Representative Judd (Sponsor): p. 2 (112)

Mindy Barton, Equal Rights Colorado: pp. 32-34 (142-144)

Brian Moore, Colorado Bar Association: pp. 40-41 (150-151)

05/01/2008 House Second Reading

*Master File pp. 184-236 (part 1), pp. 237-250 (part 2), pp. 251-275 (part 3)*

Representative Judd (Sponsor): part 1, pp. 2-3 (185-186)

**Narratives of LGBT Discrimination**

Pastor Bill Kirton, who testified on behalf of Interfaith Alliance of Colorado, the persecution faced by a gay musician from his congregation. (Senate Committee on Business, Labor and Technology, pp. 34-35.)

Senator Tapia explained that her son is gay, but moved away from Colorado due to intolerance. (Senate Second Reading, pp. 20-22.)

Senator Viega, who introduced SB08-200, mentioned that she is lesbian, but did not elaborate or share any personal experiences of discrimination. (Senate Second Reading, p. 26.)

Mindy Barton, who testified on behalf of Equal Rights Colorado, explained that she operates a hotline to help people find legal representation for LGBT and HIV issues. She mentioned that many of the calls she receives involve discrimination. (Senate Committee on Business, Labor and Technology, pp. 25, 30; House Committee on Judiciary, p. 31.)

Representative Levy spoke about promoting the dignity of her sister and her sister's partner. (House Second Reading, part 1, pp. 39-40.)

Representative Fernandino spoke about prohibiting potential discrimination against his partner and himself. (House Second Reading, part 3, pp. 21-23.)

## **DISCUSSION OF RELIGION**

Debate was primarily focused on the ability of religious institutions and individuals to discriminate against LGBT people. Most concerns were expressed in the contexts of housing and public accommodations.

In addition to generalized discussions of the religious right to discriminate, three subtopics recurred in debate. First, there was significant focus on a New Mexico case analogous to the facts in *Masterpiece*. In the New Mexico case, a Christian photographer refused to take photos of a gay couple, because the photos were intended to memorialize their commitment ceremony. Second, there was extensive discussion by the House Committee on Judiciary of other analogous circumstances to *Masterpiece*. Lastly, there was a vigorous discussion of churches' ability to discriminate against LGBT persons in the use of their facilities. This discussion prompted a House amendment to SB08-200, which explicitly exempted churches, mosques, and synagogues from the public accommodation statute.

### **General**

#### **04/29/2008 House Committee on Judiciary**

*Master File pp. 111-183*

Jim Pfaff, Colorado Family Action: pp. 24-26 (134-136)

Brian Moore, Colorado Bar Association: pp. 43-46 (153-156)

Reverend Phil Campbell, Colorado Clergy for Equality in Marriage: pp. 50-51 (160-161)

Cathy Hazouri, American Civil Liberties Union: pp. 52-53, 56-63 (162-163, 166-173)

Nathan Woodliff-Stanley, Interfaith Alliance of Colorado: pp. 66-69 (176-179)

#### **05/01/2008 House Second Reading**

*Master File pp. 184-236 (part 1), pp. 237-250 (part 2), pp. 251-275 (part 3)*

Representatives Stephens and Judd (Sponsor): part 1, pp. 14-23 (197-206)

Representative Bruce: part 1, p. 31 (214)

Representative Lundberg: part 1, pp. 43-48 (226-231)

Representatives Mitchell and Marshall: part 2, pp. 2-13 (238-249)

Representatives Stephens and Judd (Sponsor): part 3, pp. 3-4 (253-254)

Representative C. Gardner: part 3, pp. 19-20 (269-270)

Representative Stephens: part 3, pp. 23-24 (273-274)

### **Analog to *Masterpiece* – New Mexico Photographer Case**

#### **03/19/2008 Senate Committee on Business, Labor and Technology**

*Master File pp. 23-67*

Jim Pfaff, Colorado Family Action: pp. 3-4, 15 (25-26, 37)

Mindy Barton, Equal Rights Colorado: p. 29 (51)

Senator Veiga (Sponsor): p. 38 (60)

04/29/2008 House Committee on Judiciary

*Master File pp. 111-183*

Representative Stephens: p. 16 (126)

Jim Pfaff, Colorado Family Action: pp. 26, 29-30 (136, 139-40)

Mindy Barton, Equal Rights Colorado: pp. 34-39 (144-49)

Cathy Hazouri, American Civil Liberties Union: pp. 54-56 (164-166)

05/01/2008 House Second Reading

*Master File pp. 184-236 (part 1), pp. 237-250 (part 2), pp. 251-275 (part 3)*

Representatives Stephens and Judd (Sponsor): part 1, pp. 12-13 (195-196)

Representative C. Gardner: part 1, pp. 21-22 (204-205)

Representative Lundberg: part 1, pp. 37-38 (220-221)

Representative Marshall: part 2, p. 6 (242)

**Other Analogs to *Masterpiece***

04/29/2008 House Committee on Judiciary

*Master File pp. 111-183*

Representatives Roberts and Judd: pp. 10-12 (120-122)

Representative Stephens: p. 15 (125)

Representative Judd (Sponsor): pp. 17, 22 (127-132)

Jim Pfaff, Colorado Family Action pp. 27-28 (137-138)

**Construing Churches as a Public Accommodation**

03/19/2008 Senate Committee on Business, Labor and Technology

*Master File pp. 23-67*

Jim Pfaff, Colorado Family Action: pp. 8-10 (30-32)

Jenny Kraska, Colorado Catholic Conference: pp. 17-18 (39-40)

Brian Moore, Colorado Bar Association: p. 24 (46)

Mindy Barton, Equal Rights Colorado: p. 28 (50)

Senator Veiga (Sponsor): pp. 38-42 (60-64)

04/18/2008 Senate Second Reading

*Master File pp. 68-110*

Senator Veiga (Sponsor): p. 4 (71)

Senator Wiens: p. 38-39 (105-106)

05/01/2008 House Second Reading

*Master File pp. 184-236 (part 1), pp. 237-250 (part 2), pp. 251-275 (part 3)*

Representatives Gardner and Judd (Sponsor): part 1, pp. 6-12 (189-195)

Representatives Stephens and Witwer: part 1, pp. 49-52 (232-235)

Representatives Stephens and Green: part 3, pp. 11-12 (261-262)